

EXHIBIT “B”

FILED
10/5/2015 4:25:00 PM
Donna Kay McKinney
Bexar County District Clerk
Accepted By: Maria Abilez

4 CIT/PPS

2015CI16895**SAC-3**

CAUSE NO. _____

JESUS GARCIA, RENEE IRENE GARCIA
AND JACOB ANDREW GARCIA,
INDIVIDUALLY AND AS
REPRESENTATIVES OF THE ESTATE OF
STARLA DUSTEEN GARCIA ;

Plaintiffs,

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IN THE DISTRICT COURT

224th JUDICIAL DISTRICT

VS.

BEXAR COUNTY, TEXAS

PLENTY MERCANTILE LLC AND
MELISSA CHRISTIE SCARAMUCCI,
ABBY CLARK AND HEATHER MARIE
STEELE, DBA LOCAL CATERING

*Defendant.***PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, JESUS GARCIA, RENEE IRENE GARCIA AND JACOB ANDREW GARCIA, INDIVIDUALLY AND AS REPRESENTATIVES OF THE ESTATE OF STARLA DUSTEEN GARCIA, Plaintiffs and complain of PLENTY MERCANTILE LLC AND MELISSA CHRISTINE SCARAMUCCI, ABBY CLARK AND HEATHER MARIE STEELE, DBA LOCAL CATERING, Defendants, and for cause of action would show this Honorable Court the following:

**I.
DISCOVERY TRACK**

1.1 Pursuant to Rule 190.5 of the Texas Rules of Civil Procedure, Plaintiffs request the Court modify the discovery control plan and assign this case to Discovery Track Three pursuant to Rule 190.4 and Plaintiff will submit an Agreed Order or other Court Order to this effect.

**II.
PARTIES**

2.1 Plaintiffs, JESUS GARCIA, RENEE IRENE GARCIA AND JACOB ANDREW GARCIA are individual citizens and residents of Texas. They are bringing their claims for personal injuries.

2.3 Defendant, Plenty Mercantile LLC may be served through its registered agent, Traci Walton at 807 North Broadway Avenue || Oklahoma City, Oklahoma 73102. *Service on this defendant is hereby requested at this time.*

2.4 Defendant, Melissa Christine Scaramucci, DBA, 'Local Catering' may be served at 4401 Cannon Drive, Norman, Oklahoma, 73072. *Service on this defendant is hereby requested at this time.*

2.5 Defendant, Abby Clark, DBA, 'Local Catering' may be served at 6016 Fox Run Way, Oklahoma City, Oklahoma 73142-4807. *Service on this defendant is hereby requested at this time.*

2.6 Defendant, Heather Marie Steele, DBA, 'Local Catering' may be served at 4321 NW 57th St, Oklahoma City, OK 73112-1509. *Service on this defendant is hereby requested at this time.*

III. JURISDICTION AND VENUE

3.1 The amount in controversy exceeds the minimal jurisdictional limits of this Court. Plaintiff seeks monetary relief of \$74,999.00 or less including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

3.2 Venue in this case is proper in Bexar County, Texas, under Chapter 71 of the Texas Civil Practice and Remedies Code, Wrongful Death; Survival; Injuries Occurring Out of State, Section 71.002 and Section 71.031.

3.3 Plaintiffs expressly disavow any claims are being made pursuant to federal law, treaties, or constitution. All conditions precedent have been performed or have occurred.

IV. GENERAL ALLEGATIONS OF FACTS

4.1 On March 14, 2015, Conner Patrick Ottis, DOB: 8/13/1993, drove his vehicle to and entered the establishment 'Plenty Mercantile' to drink alcohol at an event that was also being put on by 'Local Catering.' Plenty Mercantile is an event venue space located at 807 North Broadway Avenue || Oklahoma City, Oklahoma 73102.

4.2 Conner Patrick Ottis was served so much alcohol by Defendants this evening that he does not remember getting behind the wheel of his vehicle.

4.3 After leaving the event put on by Defendants Local Catering and Plenty Mercantile, Conner Patrick Ottis got behind the wheel of his vehicle and drove his car that night. At approximately, 11:41pm, Conner Patrick Ottis drove the wrong way on IH 35 and collided into the vehicle being driven by Bexar County Resident Starla Dusteen Garcia, causing her death.

CLAIMS FOR RELIEF

V.

VIOLATION OF OKLAHOMA DRAM SHOP STATUTE AND CIVIL LIABILITY PURSUANT TO *BRIGAND V. THE VELVET DOVE RESTAURANT*

5.1 Plaintiffs incorporate herein by reference the allegations set forth above as though fully set out herein.

5.2 Defendants Plenty Mercantile and Local Catering violated Oklahoma Statutes Section 37-537, which prohibits any person from knowingly selling, delivering, or providing alcoholic beverages to anyone who is under age 21, has been adjudicated insane or mentally deficient, or who is intoxicated.

5.3 Moreover, in accordance with the holding in *Brigance v. The Velvet Dove Restaurant*, et al., 725 P.2d 300 (Okla. 1986), both Local Catering and Plenty Mercantile had a duty to exercise reasonable care not to provide liquor to a noticeably intoxicated

person. As the Defendants failed to meet this duty of care, Plaintiffs, who have been injured by the "noticeably intoxicated person" are able to hold Defendants civilly liable.

5.4 Plaintiffs seek liability against Defendants Plenty Mercantile and Melissa Christine Scaramucci, Abby Clark and Heather Marie Steel, (collectively referred to as 'Local Catering') for their conduct in the aforementioned violations, which were a proximate cause of Plaintiffs' injuries and damages.

VI. DAMAGES

6.1 Plaintiffs would show that, as a direct and proximate result of the above-mentioned incident, Plaintiff Starla Dusteen Garcia suffered injuries, damages and death. Plaintiff's damages include, but are not limited to the following:

- a. Pain and Mental Anguish;
- b. Medical Expenses; and
- c. Funeral and Burial Expenses.

6.2 Plaintiff, Jesus Garcia, Renee Irene Garcia and Jacob Andrew Garcia, have experienced damages including, but not limited to the following:

- a. Past Loss of Companionship and Society;
- b. Future Loss of Companionship and Society;
- c. Past Mental Anguish;
- d. Future Mental Anguish;

- e. Loss of Inheritance;
- f. Past Pecuniary Loss; and
- g. Future Pecuniary Loss.

VII.
JURY DEMAND

7.1 Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

VIII
PRAYER

8.1 WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that the Defendants be cited to appear and answer, and that on final trial, Plaintiffs have:

- 1) Judgment against the Defendants for a sum in excess of the minimum jurisdictional limits of this Court;
- 2) Pre-Judgment interest as provided by law;
- 3) Post-Judgment interest as provided by law;
- 4) Cost of suit; and
- 5) Such other and further relief to which the Plaintiffs may be justly entitled.

IX.
REQUESTS FOR DISCLOSURES

9.1 Under the Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose within 50 days of the service of this request, the information or material described in Rule 194.2.

Respectfully submitted,

DLG LUCE SALAZAR PLLC
19210 Huebner Road, Suite 200
San Antonio, Texas 78258
Telephone: 210.226.1331
Fax: (888) 286.5541

By:



ZACHARY O. LUCE
State Bar No. 24057685
F. SCOTT DE LA GARZA
State Bar No. 24055387



Cause Number: _____

District Court : _____

Donna Kay McKinney
Bexar County District Clerk

Request for Process

Style: Jesus Garcia Vs. Plenty Mercantile

Request the following process: (Please check all that Apply)

☒ Citation
 ☐ Notice
 ☐ Temporary Restraining Order
 ☐ Notice of Application for Protective Order
☐ Temporary Protective Order
 ☐ Precept with hearing
 ☐ Precept without a hearing
 ☐ Writ of Attachment
☐ Writ of Habeas Corpus
 ☐ Writ of Garnishment
 ☐ Writ of Sequestration
 ☐ Capias
 ☐ Other: _____

1.
 Name: Plenty Mercantile
 Registered Agent/By Serving: Traci Walton
 Address: 807 North Broadway Avenue II Oklahoma City, Oklahoma 73102
 Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

2.
 Name: Melissa Christine Scaramucci
 Registered Agent/By Serving: _____
 Address: 4401 Cannon Drive, Norman, Oklahoma, 73072
 Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

3.
 Name: Abby Clark
 Registered Agent/By Serving: _____
 Address: 6016 Fox Run Way, Oklahoma City, Oklahoma 73142-4807
 Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

4.
 Name: Heather Marie Steele
 Registered Agent/By Serving: _____
 Address: 4321 NW 57th St, Oklahoma City, OK 73112-1509
 Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

Title of Document/Pleading to be Attached to Process: Original Petition

Name of Attorney/Pro se: F. Scott de la Garza Bar Number: 24055387
 Address: 19210 Huebner Road, Suite 200 Phone Number: 210.226.1331
San Antonio, Texas 78258

Attorney for Plaintiff yes Defendant _____ Other _____

****IF SERVICE IS NOT PICKED UP WITHIN 14 BUSINESS DAYS, SERVICE WILL BE DESTROYED****

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED Jesus Garcia v. Plenty Mercantile and Local

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:	
Name: <u>F. Scott de la Garza</u>	Email: <u>fscott@dlglucc.com</u>	Plaintiff(s)/Petitioner(s): <u>Jesus Garcia</u>	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address: <u>19210 Huebner Road, Suite 20</u>	Telephone: <u>512.501.2981</u>	Defendant(s)/Respondent(s): <u>Plenty Mercantile</u> <u>Local Catering</u>	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
City/State/Zip: <u>San Antonio, Texas 78258</u>	Fax: <u>888.286.5541</u>	[Attach additional page as necessary to list all parties]		
Signature: _____	State Bar No: <u>24055387</u>			
2. Indicate case type, or identify the most important issue in the case (select only 1):				
Civil			Family Law	
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input checked="" type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input checked="" type="checkbox"/> Other Injury or Damage: <u>Druth Shop</u>	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax		Probate & Mental Health		
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		
3. Indicate procedure or remedy, if applicable (may select more than 1):				
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
4. Indicate damages sought (do not select if it is a family law case):				
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000				